

## Conference Paper

# Comparative Study of Civil Legal Subjects of Actors of Tort Based on Legal Normal and Custom Aspects

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**ORCID**Septian Fujiansyah: <https://orcid.org/0009-0002-8361-2290>**Abstract.**

From a legal standpoint taking rights from other legal subjects might result within legal ramifications. One of the actions that can result in the imposition of legal consequences for subjects who violate these norms is when they commit an unlawful act (PMH). Chapter 1365 within the Civil Code provides the legal basis for tolerating PMH broadly in Indonesia. This form of study falls under normative judicial and uses supplementary information through analyzing information across all three layers of legal resources. Document study data collection techniques, using qualitative analysis. According to the study's findings, it is known that the juridical position between legal norms and customs in viewing PMH is carried out by civil law subjects, from the point of view of legal norms guided by Art. 1352 and Art. 1353, then the elements are adjusted in accordance with the Civil Code's Art. 1365, whereas its habitual stance refers to Art. 5 par. (1) Law Number 48 of 2009 and as Art. 18B par. (2) of the 1945 Constitution. Furthermore, the legal implications from the aspect of legal norms and customs for civil law subjects who carry out PMH, from the aspect of the norm, must fulfill the elements in Art. 1365 of the Civil Code, namely must violate the law, conflict with the rights of others, there are losses and mistakes, then compensation can be applied to the subject of the PMH perpetrator. The implementation with regulatory significance is determined by regional customary legal systems.

**Keywords:** comparative, act against the law, norm, habit

## 1. INTRODUCTION

The Republic of Indonesia refers to alone as a law-based state, or an array of law. This is stated in the 1945 Constitution. Thus, the mechanism of individual, community and state life is regulated through regulation (whether documented otherwise undocumented). Therefore, a combination of people in general plus the governing body are required to follow the legislation. Furthermore, it suggests that every citizen possesses similar standing under legislation and authority, along with must adhere to such regulation and authority despite exception, as declared in Art. 27 par. (1) of the 1945 Constitution [1]. Therefore, of course in Indonesia, all actions that will give rise to legal consequences

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must be studied based on the applicable legal aspects. This legal aspect has a basis for study, namely based on legal sources that are recognized in a country, in this case Indonesia.

In Indonesia, there are various sources of law, starting from Laws, Jurisprudence, Customs, Doctrine and Treaties, all of these sources of law are recognized in Indonesia. So to view a problem that occurs can be studied from several legal sources. For this there will be studied a problem that often occurs in the midst of private society, namely unlawful acts (unlawful act) from the point of view of legal norms (laws and regulations) and customary norms.

The two norms will be compared (comparative) to see the legal implications that can be applied to civil law subjects who commit acts against the law from each of these aspects. A comparative approach is needed (comparative approach) which is basically to compare the application of one legal norm with another. Through this comparative approach, one will compare one legal norm or product with another. As is the case with legal products, which will be studied further regarding the legal products in question [2].

It was previously understandably that simply it can be said that an unlawful act is an act that actually violates the legislation and rules that apply. Which seems, every person or business actor violates It is possible to say that the terms of the relevant legislation and rules are an unlawful act. In Art. 1365 of the Civil Code it is established that an illegal act is any conduct which causes harm to others, and people who cause harm to other people, and people who cause losses are required to provide compensation to people who experience these losses [3].

The act referred to here is an act committed by a civil law subject to another civil law subject. Therefore the approach taken to determine the legal implications for these legal subjects is not to leave civil society. However, in Indonesia itself the legal aspect is not only based on written laws and regulations, but there are also other legal aspects that apply which can be another basis for determining legal implications for legal subjects who violate norms, one of the aspects referred to here is based on norms. habits that live in the midst of society

Basically an action (an act against the law) can be subject to legal sanctions as long as there are legal aspects that regulate it. It is understood that the aspect referred to here is to see from a point of view or a side of things, while law is a regulation made by the Government that applies to everyone in a country. Law can also be said as laws, regulations and so on to regulate social life in society [4]. So that what is meant by the legal aspect is studying or examining an activity or thing from the point of view/legal

side (laws and regulations) that apply. Ofcourse when referring to the issue of unlawful acts, the legal aspect referred to is inseparable from Art. 1365 of the Civil Code.

On the other hand, if you compare it with the customary norms that have existed in society so far, of course there will be questions and problems in the future if the community wants to solve the problem according to existing customary norms, and not based on legal norms (legislation). Of course, it is necessary to look for clear standards in the application of the customary norms in question. Which will eventually lead to legal implications that can be imposed on civil law subjects who commit acts against the law.

Whereas based on the whole series of backgrounds above, it is known that there is an identification of problems or issues that will be examined in this study, namely relating to how the juridical position is between legal norms and customs in viewing unlawful acts in the civil concept. Apart from that, other issues will also be discussed regarding the implications based on aspects of legal norms and habits for civil law subjects who commit acts against the law. In other words, this research is not far from aiming to answer these problems, so in the end the researcher raised the research title: *“Comparative Study of Civil Legal Subjects of Actors of Tort Based on Legal Normal and Custom Aspects”*.

## 2. METHODOLOGY/ MATERIALS

The technique of inquiry employs normative legal study (normative legalistic) to comply alongside the definition of the issue as well as academic aims, and its methodology relies on constitutional principles of statutes and rules. Moreover, the study in question is a narrative evaluation. Secondary information is employed to conduct this conventional juridical study, which is supported by lawful information in the shape of main judicial documents, additional legal sources, and postsecondary legal materials. This research's data collecting approach comprised a paper research/document study, as well as analyzing the results and the current regulations and laws in place. The paperwork study is an inquiry that evaluates numerous documents, including those linked to regulations and rules and others that are already in existence [5].

Data points will be analyzed at the finish of this investigation; data analysis is the most crucial and crucial element in this creating. The information that was initially acquired and managed is analyzed and constructed during the study's mechanism [6]. Data analysis is also an activity of providing studies which can mean adding, criticizing, commenting, supporting, and then making a conclusion on research results with the

help of theories that have been mastered and one's own thoughts [7]. The present research used qualitative analysis, which is a method of data evaluation that refrains from employing statistics but instead provides written descriptions of the results, thus emphasizing the reliability of the information [5].

### 3. RESULTS AND DISCUSSIONS

#### 4. Juridical Position Between Legal Norms and Habits in Viewing Unlawful Acts in the Civil Concept

Various kinds of understanding of the Unlawful Act itself. There are those who mean that an unlawful act is an act against the law, an act that is contrary to the rights of other people, an act that results in the loss of another party and of course the party who commits the unlawful act must compensate for the loss to the party who has been harmed. There are also those who interpret unlawful acts as actions carried out outside their authority or beyond their control. Then acts against the law are also interpreted as acts that violate the values of decency, decency values that develop in society and actions that contravene the universal rules which prevail in the sphere of legislation.

In this context, there are people who have suffered losses, both material and immaterial losses, so that people who have been harmed demand that their rights be restored. Through this claim the victim seeks to obtain civil recovery, for example by obtaining compensation. Within legal theory, it contains three types of wrongful acts such as:

1. Intentional unlawful act;
2. Improper conduct committed despite guilt (i.e., without purpose or carelessness);
3. Acts against the law due to negligence [8].

The scope of the definition of unlawful acts by the government in Indonesia comes from unlawful acts in the Civil Code in the Netherlands. The historical roots of the notion of unlawful acts in the Netherlands come from code civil French heritage. The formulation of unlawful acts in provisions 6:162 of the Dutch Civil Code which is parallel to Art. 1365 of the Civil Code in Indonesia comes from Art.s 1382, 1383, 1384 Code Civil France from Code Napoleon. The formulation of unlawful acts in the civil code in the Netherlands has developed very broadly, in contrast to Art. 1365 of the Indonesian Civil Code. In essence, The emergence conduct illegal acts Dutch Civil Code as referred to in Art. 6:162 of the Dutch Civil Code, consists of: [9]

1. violation of rights;
2. violation of a legal obligation;
3. violation of unwritten legal rules regarding proper social behavior.

Substantially, the concept or term “Unlawful Acts” in Art. 1365 of the Criminal Code is more of a general law concept (general law concept) rather than represents an established term for legality. In that case, the meaning of ‘unlawful act’ in the formulation of Art. 1365 of the Civil Code is a rule that actually refers to generally accepted rules of law (natural rights), Specifically, each judicial matter that engages in proceedings which result in suffering to various other individuals ought to be held liable to the affected party, regardless of which the subject of law is person (a natural person), legal being (legal entity), as well as corporate or whatsoever (office). In other words, the formulation of Art. 1365 of the Civil Code is a general law doctrinal. In line with this, Rosa Agustina stated that the definition of an unlawful act in Art. 1365 of the Civil Code is a formulation that is very open to be interpreted, because the Art. is a normative framework [9].

Seeing the juridical position of legal norms in viewing unlawful acts in the civil concept, one must also understand that this unlawful act originated from an agreement that was born from the law itself. According to Art. 1352 of the Civil Code, it is stated: “Agencies that are born because of laws, arise from laws as laws or laws as a result of people’s actions”. Therefore, based on Art. 1352 of the Civil Code, an agreement born from a law can arise as a result of:

1. an arrangement based solely upon the rule of law;
2. an arrangement that arose regarding legislation as a result of actions taken by individuals.

What is meant by the alliances born from the law alone are the alliances that arise from family relationships. So, what is found in Book I of the Civil Code, for example the obligation of a child who is able to provide support to his parents who are in a state of poverty. whereas as stated Art. 1353 of the Civil Code, it is mentioned: “The alliance that is born and the law as a result of the actions of people, appears and a legal action or and an action that violates the law”. So that according to Art. 1353 of the Civil Code, an alliance born from the law due to the actions of people, can arise from: [10]

1. act according to the law;
2. acts against the law.

According to the description previously mentioned, the status of legal as it relates of statutory requirements (rules & ordinances) is recognized in view of legal actions on the concept of civil law is born from the existence of an agreement that has been determined by laws and regulations that were born because of laws and the way a consequence of those breaking lawful acts, this is in accordance with the provisions in Art. 1352 of the Civil Code and Art. 1353 of the Civil Code. As well as to determine the elements of the unlawful act referred to by referring to Art. 1365 of the Civil Code.

Furthermore, to see the juridical position of customary norms in viewing unlawful acts in the civil concept, of course it is necessary to examine other sources of law, namely sources of customary law to understand it. The source of law is everything that gives rise to binding and imposing rules, so that if those When regulations are broken, those responsible face harsh and genuine consequences. The entire subject refers to the elements which determine the establishment of the statute, as well as the sources of compelled to feed the official implementation regarding a legislation, i.e. in which the legislation is able to be identified, where the law originated, whereas the legal system is accessible or where the tribunal discovers the law, to ensure upon what constitutes how it is able to be determined that that particular laws has enforceable effect or is applicable, and others. Therefore according to Sudikno the source of law itself is used in several meanings such as: [11]

1. As the basis of law, as something that is the beginning of law.
2. Shows the previous law that gives ingredients to the current law.
3. As a source of validity, which gives strength, applies formally to the rule of law (ruler, society).
4. As a source from where to know the law.
5. As a source of the occurrence of source law that gives rise to law.

Based on the description above, it seems that there is a legal qualification given to relations among individuals in humanity, such that real relationships evolve in essence to evolve into lawful interactions, resulting in an instant attachment amongst the people which conduct out their interactions. The aforementioned relationship takes the shape of legitimacy, which is present to the realm of law as a result of the legal relationship's manifestation. This sort of authority is generally known as rights [12].

The legal relations that live in this society are what are called customary norms. So that what is categorized as an unlawful act in the concept of customary norms

is the existence of the rights of one community that are taken or disturbed by other communities. In connection with the position of customary norms in Indonesia, it is often referred to as customary law.

Traditional law employs practices the fact that are still practiced by native Indonesians. As is made clear under the explanation of the constitutional document from 1945 of the Republic of Indonesia such a nation's Constitutional is merely a part that particular the nation's basic law. The Constitution is the written fundamental law, but the informal fundamental rule equally is relevant, meaning the basic norms that emerge & remain in force through the operation of managing the state despite the fact they're not have not been spelled out down. This unwritten law is included in customary norms (customary law) which are constitutionally recognized and their validity in Indonesia. So as long as the customary norms are still recognized by the community, then they should be maintained and upheld.

The position of this customary norm can also be seen clearly in the description of Art. 18B par. (2) of the 1945 Constitution, which states: "The state recognizes and respects customary law community units and their traditional rights as long as they are still alive and in accordance with developments society and the principles of the Unitary State of the Republic of Indonesia, which are regulated by law". This means that clearly this customary norm is equated with unwritten customary law that applies in society, so that its position must be taken into account, including in court if there is an issue such as an unlawful act that the community wishes to use these customary norms in handling it.

Of course this cannot be immediately rejected by the Panel of Judges who examined and tried the case (at the District Court). Because the position of this customary norm is also strengthened by the provisions of Art. 5 par. (1) of Law Number 48 of 2009 concerning Judicial Power which states: "Judges and constitutional judges are obliged to explore, follow, and understand legal values and a sense of justice that lives in public." Here it is clear that judges are required to explore, follow and understand legal values and a sense of justice that live in society, of course what is meant here is customary law/customary norms that exist in society. So that judges cannot limit the resources used only based on the norms of statutory regulations, they must also be based on customary norms desired by the community, including in the case of prosecuting acts against the law. this provision is intended so that the decisions of judges and constitutional judges are in accordance with the law and the sense of justice of society [13].

With regard to the conflict of rights that fall into the category of unlawful acts from the aspect of habit, it can be seen from Rosa Agustina's opinion that formulating Improper activities must meet the following criteria: they are counter against the perpetrator's

statutory duties, they are opposed to the personal liberties of someone else, they are opposed to morality, comprehensiveness, and foresight [8].

Based on the entire series above, looking at the juridical position between legal norms and customs in viewing unlawful acts in the civil concept can refer to Desak Made Setyarini's opinion, which states that as long as these elements have been fulfilled from the actions committed by that person, then that person already included in the category of committing an unlawful act. The elements that must be met/laid out in an act of resistance in general are as follows:[3]

1. There are actions/deeds, which are referred to as actions/deeds that are positive or negative, meaning that every behavior is to do or not to do;
2. The action/deed violates the law (positive/customary law);
3. There is a loss/loss;
4. There is a causal relationship with the unlawful act itself resulting in a loss;
5. There is a mistake/error.

Of course the elements described above also apply not only based on Art. 1365 of the Civil Code, but also apply to pin a person to have committed an unlawful act from the perspective/aspect of the customary norms that live in society. So if the unlawful act is tried in a civil court, the panel of judges who examines it must also examine the customary norms that live in that society. This is also in line with the provisions of Art. 5 par. (1) of Law Number 48 of 2009 concerning Judicial Power and also Art. 18B par. (2) of the 1945 Constitution as described above. So it's not only based on Art. 1365 of the Civil Code, but also the existing customary rules must also be considered before passing a decision.

## 5. Implications Based on Aspects of Legal Norms and Habits for Civil Law Subjects Who Commit Actions Against the Law

There are several types of unlawful acts put forward by jurists have proposed numerous forms of unlawful acts, including R. Wirjono Prodjodikoro's use of the phrase unconstitutional act, Utrecht's use on the phrase unconstitutional act, and Sudiman Kartohadi Prodjo's usage of the concept prohibited act. According to R. Wirjono Prodjodikoro, the phrase "unlawful act" is very limited, because it encompasses not only acts that



explicitly break the law, but also acts that explicitly violate laws other than the law yet can be believed to passively infringe a regulation [14].

The discussion of unlawful acts is of course inseparable from the rights and obligations between one legal subject and another. Legal subjects in legal circles use the term law firm (Oentari Sadino), legal crew (St.K. Malikul Adil), legal person (Soerjono Soekamto, Purnadi Purbacaraka) and so on [15].

Legal subject according to Apeldoorn is everything that has legal authority or personlijkheid. The legal authority is the ability to support legal subjects provided by objective law [16]. The definition of legal subject or rechts subject according to Algra is that everyone has rights and obligations, which give rise to legal authority (jurisdiction). The legal authority is the authority to be the subject of rights. Legal subjects in carrying out legal actions have authority. The authority of legal subjects is divided into two, namely:

1. authority to have rights (jurisdiction), and
2. authority to carry out (carry out) legal actions and the factors that influence it.

Related to this context, the implications based on aspects of legal norms for civil law subjects who commit acts against the law are still embedded in the provisions of Art. 1365 of the Civil Code. It was emphasized that according to Art. 1365 of the Civil Code, The basic point of an unlawful act is that it is a deed and/or behavior which breaches the regulations as well as causes loss to any other persons (legal subject). In order to decide how well an act is prohibited, the following conditions must be met: the conduct is opposite to perpetrator's contractual responsibilities, their demonstrate is in contrast to the prejudicial freedoms of someone else, the act is opposed towards decent behavior, while the conduct themselves is opposite to etiquette comprehensiveness, and caution [17].

Looking at the legal implications for civil law subjects who commit acts against the law from a legal perspective, one can see the explanation from Desak Made Setyarini, which explains that in acts/actions against the law, claims for compensation comply with the provisions of Art. 1365 of the Civil Code, there is no need to say how the compensation should be arranged, you don't need to go into detail and should replace the ideal loss. Forms of compensation for unlawful acts, in the form of the following: [3]

1. Compensation in the form of money for the shrinking of assets and assets as a result of actions/actions against the law (Material Compensation, and the most demanded in practice).
2. Repairs in the same condition as before.

3. Refund of costs for restoration in its original state.
4. Compensation for financial losses for the suffering and distress of a person/good name tarnished due to unlawful actions/actions (immaterial compensation).

Whereas based on the view of the (written) legal norms, compensation as mentioned above can only be imposed (legal implications) on civil law subjects (as offenders) if the elements of an unlawful act are contained in Art. 1365 of the Civil Code, namely: "Every act that breaking the law and causing harm to others, obliging the person who caused the loss due to his mistake to compensate for the loss. Then the elements in question are as follows:

1. the act must violate the law;
2. contrary to the rights of others;
3. there is a loss for others;
4. there is an error.

So that according to the view of legal norms as Art. 1365 of the Civil Code views the implications of civil law that can occur to legal subjects who commit acts against the law, after the elements mentioned in Art. 1365 of the Civil Code above are fully fulfilled, then the compensation can only be imposed on the legal subject of the violator.

As described above, when viewed from the logical flow of unlawful acts, only acts that violate the rights of other people or are contrary to the law or with legal obligations specified in the law are written only (Art. 1365 of the Civil Code and other statutory regulations). -other related invitations). Because this school has a narrow view of unlawful acts, many cases that occur in society are basically unlawful acts but according to this logical school are not classified as unlawful act (act against the law).

As for what is meant by a narrow interpretation, it is just said that it exists unlawful act, if: There is a violation of a person's subjective rights; This action is contrary to the legal obligations of the perpetrator. To fulfill a sense of justice, the definition of an unlawful act is broadened. The definition of an unlawful act includes an act that is contrary to decency and decency, conflict with one's own obligations determined by law, contrary to the rights of others. From this formulation, the interpretation of the notion of an unlawful act is very broad and covers all people's lives [18].

Based on the above understanding, an understanding arises of the influence of customary values (customary norms) in determining whether a legal subject has committed an unlawful act or not. If it is not only based on statutory norms, but also customary

norms (customary law) it becomes a benchmark that must be considered to determine and apply legal implications for legal subjects who commit acts against the law.

Customary law is a set of rules that are not determined by statutory institutions, but rather legal awareness and legal needs of citizens (reality) which is obeyed, is called so because the community is able to accept these rules as law and it turns out that these rules are maintained by other community authorities who do not belong to the realm of statutory institutions. The weaknesses of the law include: first, that the law is unwritten and therefore cannot be formulated clearly and in general it is difficult to replace it. Second, that the law does not guarantee legal certainty and often complicates proceedings because the law has various characteristics. Customary law is included in the law.

Discussing about customary norms cannot be separated from the view of legal anthropology. It is said that legal anthropology is closely related to customary law, and customary law is a law that lives in the midst of society that was born from habits that have been agreed upon by the whole community, both culture and habits. According to the anthropological view, the place of law is in the natural culture of society. The definition of culture is very broad, including a view of society about its need to survive. Laws are also the rules governing the production and distribution of wealth and the methods for protecting society against internal disturbances and external enemies. Several teachings with an anthropological wing were put forward, among others, by Molinowski, Hoebel, Gluckman, Bohannan, and Pospisil [19].

Associated with legal implications from the aspect of customary norms for civil law subjects who commit acts against the law. So the customary norm can only be applied to the subject of the law of the offender when it has fulfilled certain conditions as a customary law. Habit is an action according to a regular, usual, normal or customary pattern of behavior in the life of a certain community or association. In addition, it is an act that is done repeatedly in society regarding a certain matter. When a certain custom is accepted by the community, and that custom is always repeated because it is felt to be something that should be done, and the deviation from it is considered as a violation of the law that lives in the community, then a legal custom arises that is viewed by the society living in the community as law. According to Utrecht, in order to create it, a number of specific conditions are required, among others:

1. Material requirements: There are acts of behavior that are carried out repeatedly in certain societies (long and inveterate custom);

2. Intellectual requirements: There is legal belief from the community concerned (the opinion of necessity);
3. There are legal consequences when the law is violated.

So that the conditions above are the basis for measuring customary law that really exists and is real, that way the sanctions (legal consequences) contained therein can be applied to people who believe in it (legal subject) in this case the customary law community.

Tradition themselves are an expression upon a country's a person's another of the many embodiments of the inner being of the country in question through generation to generation. As a result, each nation in worldwide has a variety of customs that are distinct from each other. Given this disparity, it is possible to assert that an adat is the least essential aspect that provides uniqueness to persons involved.

The level of civilization, as well as the modern way of life, turned out to be unable to eliminate the customs that lived in society. fresh. Within this State of Indonesia, the customs of the regions and ethnic groups are different, although the basis and nature are one, namely their Indonesianness. Therefore, it is said that the customs of the Indonesian people are Bhineka (different in the ethnic areas of the nation), Tunggal Ika (but still one too, namely the basis and nature of its Indonesianness) [20].

In this context, customary norms can be applied as a basis for a person to be subject to legal implications for his unlawful acts. Because in fact this customary law is one source of law that is recognized in Indonesia. In terms of application and form of legal consequences, it is returned to the customary norms of each community in Indonesia itself. However, examining its position as a source of law, it is appropriate that customary norms must also be considered when giving legal implications for subjects who violate the rights of other legal subjects. In this way, unlawful acts are not only guided by written legal norms but also by the customary norms of each custom, as long as it is interpreted that the elements of unlawful acts are fulfilled in it.

## 6. CONCLUSION AND RECOMMENDATION

The juridical position between legal norms and customs in viewing unlawful acts in the civil concept, in terms of legal norms born from the existence of an agreement that was born due to laws and actions that harm other people as stipulated in Art. 1352 and Art. 1353 of the Civil Code, looks at the elements can be guided by Art. 1365 of the Civil Code. While the customary position in this matter can refer to Art. 5 par. (1) of Law Number

48 of 2009 concerning Judicial Power which states: “Judges and constitutional judges are obliged to explore, follow, and understand legal values and a sense of justice that lives in public”. This means that in examining and adjudicating a case in Indonesia, the judge is obligated to consider legal values and the sense of justice that lives in society, this sense of justice and legal values in this society is a manifestation of customary norms whose position has been recognized, including in the context of Unlawful Acts. The position of this Customary Norm can also be seen from the elucidation of the 1945 Constitution which in essence this custom can be interpreted as an unwritten basic law that must be upheld, as realized in Art. 18B par. (2) of the 1945 Constitution.

The legal implications from the aspect of legal norms and habits for civil law subjects who commit acts against the law, from the aspect of norms must fulfill the elements of Art. 1365 of the Civil Code which in essence, namely that the act must violate the law, conflict with the rights of others, cause harm to other people and there is an error, if the element is fulfilled then the subject of civil law can be subject to compensation as a result of an unlawful act. Meanwhile, from the perspective of customs, it is necessary to understand that custom is one of the recognized sources of law in Indonesia, such as laws, treaties, jurisprudence and doctrine. In order for this habit to be used as a basis for applying legal implications to subjects who commit acts against customary law, it must have the following conditions Material requirements: There are acts of behavior that are carried out repeatedly in certain societies (long and inveterate custom), Intellectual requirements: There is legal belief from the community concerned (the opinion of necessity) and There are legal consequences if the law is violated. If these three conditions are met, then the customary aspect can be applied to impose legal implications on the subject of the perpetrator of the unlawful act. it is necessary to understand that the forms of legal implications for perpetrators of unlawful acts will vary because the habits of each society are different, so it is returned to their respective customary laws to provide appropriate forms of legal sanctions for the legal subjects of perpetrators of unlawful acts.

Based on the conclusions above, a recommendation formula can be found that can be used to accommodate these legal norms and customary norms in a context in carrying out the civil context, especially regarding the application of legal implications for perpetrators of illegal acts. First, the formation of the latest Civil Code by the Legislatures which accommodates certain parts of customary norms in the context of discussing unlawful acts. Second, the formulation of the latest Civil Code must explain clearly the meaning and/or true meaning of an unlawful act, including the elements of an unlawful act that must be fulfilled before giving legal implications to the violators/perpetrators.

Third, the concept of unlawful acts in the latest Civil Code, must be able to become a reference for other pieces of legislation concerning private law to imply that someone has committed an unlawful act based on the law *lex specialist* available.

## References

- [1] E. N. A. . Sihombing, Pembentukan Peraturan Daerah Partisipatif. Malang: Inteligencia Media, 2018.
- [2] J. Ibrahim, Teori dan Metodologi Penelitian Hukum Normatif. Malang: Bayumedia, 2005.
- [3] D. M. Setyarini, "Pertanggungjawaban Direksi Perseroan Terbatas Yang Melakukan Perbuatan Melawan Hukum," *Analog. Huk.*, vol. 1, no. 1, p. 14, 2019.
- [4] Sodarsono, Kamus Hukum. Jakarta: Rineka Cipta, 2012.
- [5] S. HS and E. S. Nurbaini, Penerapan Teori Hukum Pada Penelitian Tesis dan Disertasi. Jakarta: PT Raja Grafindo, 2019.
- [6] S. Soekanto, Penelitian Hukum Sosiologis. Jakarta: PT Raja Grafindo, 2014.
- [7] M. Fajar and Y. Achmad, Dualisme Penelitian Hukum & Empiris. Yogyakarta: Pustaka Pelajar, 2010.
- [8] I. Sari, "Perbuatan Melawan Hukum (PMH) Dalam Hukum Pidana Dan Hukum Perdata," *J. Ilm. Huk. Dirgant.*, vol. 11, no. 1, p. 54, 2020.
- [9] E. Simanjuntak, "Restatement Tentang Yuridiksi Peradilan Mengadili Perbuatan Melawan Hukum Pemerintah," *Huk. PERATUN*, vol. 2, no. 2, pp. 172–173, 2019.
- [10] P. . Simanjuntak, Pokok-Pokok Hukum Perdata Indonesia. Jakarta: Djambatan, 2009.
- [11] Soeroso, Pengantar Ilmu Hukum. Jakarta: Sinar Grafika, 2009.
- [12] S. Rahardjo, Ilmu Hukum. Bandung: PT. Citra Aditya, 2000.
- [13] Penjelasan Atas Pasal 5 ayat (1) Undang-Undang Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman.
- [14] R. Dameria, A. Busro, and D. Hendrawati, "Perbuatan Melawan Hukum Dalam Tindakan Medis Dan Penyelesaiannya Di Mahkamah Agung (Studi Kasus Perkara Putusan Mahkamah Agung Nomor 352/Pk/Pdt/2010)," *Diponegoro Law J.*, vol. 6, no. 1, 2017, doi: <https://doi.org/10.14710/dlj.2017.15542>.
- [15] C. Ali, Badan Hukum. Bandung: Alumni, 2005.
- [16] L. J. V. Apeldoorn, Pengantar Ilmu Hukum. Jakarta: Pradnya Paramita, 1983.
- [17] Isman, "Kumulasi Gugatan Antara Perbuatan Melawan Hukum Dan Wanprestasi," *Yudisial*, vol. 14, no. 1, 2021.

- [18] M. Abidin, "Penerapan Batas-Batas Wanprestasi Dan Perbuatan Melawan Hukum Dalam Suatu Perikatan," *Alauddin Law Dev. J.*, vol. 3, no. 2, 2021.
- [19] A. Suadi, *Filsafat Hukum: Refleksi Filsafat Pancasila, Hak Asasi Manusia, dan Etika*. Jakarta: Prenada Media.
- [20] S. Wignjodipoero, *Pengantar dan Asas-Asas Hukum Adat*. Jakarta: Haji Masagung, 2004.